

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

BYRON ORIGINALS, INC.,

Plaintiff,

v.

Civil Action No. 5:05CV82
(STAMP)

IRON BAY MODEL CO., JOHN E. CRAIG
and CHRISTINA L. CRAIG,

Defendants.

MEMORANDUM OPINION AND ORDER
GRANTING PLAINTIFF'S MOTION FOR ORDER
REQUIRING DEFENDANTS TO APPEAR AND
ANSWER DISCOVERY IN AID OF EXECUTION

I. Background

On November 18, 2005, this Court entered a judgment against the defendants, Iron Bay Model Co., John E. Craig and Christina L. Craig, in the above-styled civil action. A writ of execution was issued by the Clerk of the Court on February 9, 2006 and on February 16, 2006, the United States Marshals Service served the writ of execution and returned without goods or chattel to apply to the judgment entered by this Court. Because the plaintiff has not been able to successfully satisfy its judgment, the plaintiff requests the issuance of a summons for the debtor to appear and answer interrogatories in aid of execution in accordance with federal and state law. Moreover, the plaintiff requests that a commissioner be named to facilitate discovery if necessary and that all costs and fees incurred in conducting such discovery be paid by the defendants.

II. Discussion

Rule 69(a) of the Federal Rules of Civil Procedure guides this Court in execution procedures generally and in discovery in aid of execution. Chicago Pneumatic Tool Co. v. O.V. Stonestreet, 107 F.R.D. 674 (S.D. W. Va. 1995). Specifically, Rule 69(a) states:

Process to enforce the judgment for the payment of money shall be a writ of execution, unless the court directs otherwise. The procedure on execution, in proceedings supplementary to and in aid of a judgment, and in proceedings on and in aid of execution shall be in accordance with the practice and procedure of the state in which the district court is held, existing at the time the remedy is sought, except that any statute of the United States governs to the extent that it is applicable. In aid of the judgment or execution, the judgment creditor or his successor in interest when that interest appears of record, may obtain discovery from any person, including the judgment debtor, in the manner provided in these rules or in the manner provided in the practice of the state in which the district court is held.

Fed. R. Civ. P. 69(a). Pursuant to West Virginia Code § 38-5-1, a debtor can be brought before a commissioner in chancery "to answer upon oath such questions as shall be propounded at such time and place by counsel for the execution creditor, or by the commissioner." W. Va. Code § 38-5-1. While the federal court system does not have a commissioner in chancery, 28 U.S.C. § 636 provides, in pertinent part, that "[a] magistrate may be assigned such additional duties as are not inconsistent with the constitution and laws of the United States." 28 U.S.C. § 636(b)(3); Chicago Pneumatic Tool Co., 107 F.R.D. at 676. Accordingly, the magistrate judge may conduct a hearing as

described by West Virginia Code § 38-5-1 pursuant to Federal Rule of Civil Procedure 69(a) and may also order the execution debtor to assign personal property to the United States Marshal for the purpose of satisfying a judgment. Id. at 677.

Pursuant to Rule 69, this Court appoints United States Magistrate Judge James E. Seibert to serve as a "commissioner" to conduct a hearing as described by West Virginia Code § 38-5-1. The Clerk is DIRECTED to issue a summons pursuant to Rule 4 of the Federal Rules of Civil Procedure upon defendants, Iron Bay Model Co., John E. Craig and Christina L. Craig, to appear before Magistrate Judge Seibert on May 2, 2006 at 1:30 p.m. at the Magistrate Judge's Courtroom on the Fourth Floor of the United States Courthouse, Twelfth and Chapline Streets, Wheeling, West Virginia 26003 to answer upon oath questions submitted by the plaintiff as Exhibit D to its motion and attached as Appendix 1 to this order, and such further questions as shall be propounded by counsel for the plaintiff or by Magistrate Judge Seibert. In addition, the Clerk is DIRECTED to attach a copy of this order and Appendix 1 to the summons issued to defendants.

At the hearing, the defendant debtors shall produce all books and records relating to the interrogatories stated in Appendix 1 of this opinion and convey or assign to the United States Marshal for the Northern District of West Virginia all money, bank notes, securities, evidences of debt or other personal property, chooses

in action or other intangible personal property as may be ordered by Magistrate Judge Seibert for the enforcement and payment of the judgment including interest and costs outstanding in the above matter.

IT IS SO ORDERED.

The Clerk is DIRECTED to transmit a certified copy of this memorandum opinion and order to counsel of record herein and to the pro se defendants.

DATED: April 12, 2006

/s/ Frederick P. Stamp, Jr.
FREDERICK P. STAMP, JR.
UNITED STATES DISTRICT JUDGE

BYRON ORIGINALS, INC. V. IRON BAY MODEL CO.

INTERROGATORIES IN AID OF EXECUTION

General Information

1. Please state your name.
2. Please state your address.
3. What is your occupation?
4. Who is your employer?
5. What is the address of your employer?
6. How long have you worked at your current employment?
7. What is your current salary? (hourly wage)

Real Property

8. Do you or your partnership or company have an ownership interest in any real property?
9. If so, for each parcel of property, state:
 - a. The address and legal description of the property;
 - b. The size of the property;
 - c. A description of each structure and other improvement on the property;
 - d. The name and address of each person or business, other than you, with an ownership interest in the property;
 - e. The ownership of the property as stated in the documents of the title, and the location of each such document;
 - f. The present value of your equity interest in the property.

Personal Property Generally

10. List each item and state the estimated present fair market value of the personal property owned by you, your partnership or company, including all vehicles.

Encumbrances

11. Is any of the real or personal property owned by you, your partnership or company, either individually, jointly, or otherwise, encumbered by either a real estate mortgage, chattel mortgage or any other type of lien? (chattel mortgage – instrument where owner transfers title to, or creates a lien upon, personal property as security for the performance of an act, which is usually the payment of money.)

12. If so, for each item of property, state:

- a. A description of the property encumbered;
- b. The nature of each encumbrance;
- c. The date when the property was encumbered;
- d. The name and address of each person who holds the encumbrance;
- e. The consideration received for each encumbrance;
- f. The name and address of each person who paid the consideration for the encumbrance;
- g. The date and place of recordation, and sufficient description of the recording data for each encumbrance to identify it.

13. Has any item of your property been pledged to secure a debt?

14. If so, for each item of property, state:

- a. A description of the property pledged;
- b. The amount of the debt the property was pledged to secure;
- c. How the debt was incurred;
- d. The date on which the debt was incurred;
- e. The place where the debt was incurred;
- f. The name and address of each pledgee;
- g. The date on which possession of the property pledged was transferred to the pledgee.

Business Interests

15. Do you have an ownership interest in any business?

16. If so, for each business, state:

- a. The name of the business;
- b. The address of the principal place of business or general office;
- c. The address of each place at which the business is conducted;
- d. The type of business conducted;
- e. The form of business organization;
- f. The date you acquired your interest in the business;
- g. The present value of your interest in the business; and its percentage of the total value of the business;
- h. Your office or position in the business;
- I. The name and address of each officer and director or partner in the business;
- j. The name and address of each bank at which the business maintains any type of checking or deposit account or from which the business has borrowed money.

17. Were any articles of incorporation, partnership or certificates of doing business under any name, whether a fictitious name or not, filed with any governmental agency by any of the enterprises mentioned in the preceding interrogatory?

18. If so, for each such filing, state:

- a. The nature of the document filed;
- b. The location of the office where filed;
- c. The date of filing.

Stocks and Bonds

19. Do you own any stocks, bonds, or other securities of any class in any governmental organization, company, firm or corporation, whether foreign or domestic?

20. If so, for each organization, state:

- a. The name and address of the organization in which you own any property or security interest of any sort;
- b. A description of each security or other evidence of ownership;
- c. The serial number of each bond, share, stock certificate or other evidence of ownership or security;
- d. The date on which each bond, share, stock certificate or other similar interest was acquired by you;
- e. How each bond, share, stock certificate or other interest was acquired by you (whether by purchase, gift or other means);
- f. The name and address of each person, firm or corporation from whom each bond, share, stock certificate or other interest was acquired, regardless of mode of acquisition;
- g. The name, address and telephone number of any person, firm or corporation with whom Defendant shares, under any form of joint ownership or community interest, any degree of ownership or control of any of the above securities;
- h. Whether or not you presently owe any money to anyone for the purchase of the securities.

21. Are any of the bonds, share, stock certificates or other securities owned by you pledged, mortgaged or subject to an option to repurchase by anyone?

22. If so, state:

- a. The name and address of each person, firm or corporation holding such interest in your securities;
- b. The date such interest was acquired;
- c. A description of the interest.

Bank Accounts

23. Do you, your partnership or company, maintain any business bank accounts, whether checking, savings or otherwise?

24. If so, for each account, state:

- a. Where the account is located;
- b. The name and address of the bank and branch holding the account;
- c. The name under which the account is held;
- d. The balance of the account as of the present;
- e. The account number.

25. Do you maintain any personal checking or savings accounts?

26. If so, for each account, state:

- a. Where the account is located;
- b. Under what name the account is held;
- c. The name and address of the bank and branch holding the account;
- d. The balance of the account as of the present;
- e. The account number.

27. Do you have a joint savings or checking account with anyone?

28. If so, for each account, state:

- a. Where the account is located;
- b. The name and address of the bank or branch holding the account;
- c. The name or names under which it is held;
- d. The balance of the account as of present.
- e. The account number.

29. Do you have any money on deposit, either in a checking account or savings account, in any name other than your own?

30. If so, for each account, state:

- a. Where the account is maintained;
- b. The name under which the account is maintained;

- c. The name and address of the bank or branch where the account is located;
- d. The amount of the account as of present;
- e. The amount or portion of the account which belongs to you.
- f. The account number.

31. Do you have any accounts in any bank which you are holding in trust for anyone else?

32. If so, for each account, state:

- a. The name and address of the bank or branch where the account is maintained;
- b. The date on which the account was opened;
- c. The source of the deposits in the account;
- d. The name and address of each beneficiary who has an interest in the account;
- e. Whether or not any beneficiary of the account is related to you, and, if so, the relationship.
- f. The account number.

Safe Deposit Boxes

33. Do you, your partnership or company, have access to any safe deposit box or other depository for securities, cash or other valuables?

34. If so, for each depository, state:

- a. The name and address of each person, firm or corporation to whom the depository is rented or leased;
- b. The name and address of the bank or branch where the depository is located;
- c. The name and address of each person having access to the depository;
- d. A description of the property contained in the depository as of the present;
- e. The date on which you last entered the depository.
- f. The depository number.

35. Have any of the contents of the above-mentioned depositories been removed since 3/19/01?

36. If so, for each item removed, state:

- a. A description of the property removed;
- b. The exact date of the removal;
- c. Why it was removed;
- d. The name and address of each person who removed it;
- e. The name and address of each person, firm or corporation to whom the property removed was conveyed or transferred.

Patents and Copyrights

37. Do you, your partnership or company, own any interest of any kind in any patent or copyright?

38. If so, for each interest owned, state:

- a. The registry number of the patent or copyright;
- b. A description of the item patented or copyrighted;
- c. The name and address of each person, firm or corporation who shares some interest in the patent or copyright, and the amount or percentage of each interest;
- d. The amount of income you receive from the patent or copyright per year.

Choses in Action – (the right of a creditor to be paid)

39. Do you, your partnership or company, now own any choses in action of any nature?

40. If so, as to each, state:

- a. The general nature of the claim;
- b. The name and address of each person who you claim is liable;
- c. Whether the claim or chose in action is for a liquidated amount;
- d. The amount you claim as damages;

e. Whether any suit or action has been brought to reduce the claim to judgment, and, if so;

1. The title and number of the case and the court in which the action is pending;
2. The date of filing the action;
3. The current status of the case.

f. Whether any offer of settlement has been made, and, if so, by whom and for what amount;

g. Whether any compromise agreement has been reached, and, if so, the further acts required to effect the settlement.

Property Held by Others

41. Have you, your partnership or company, at any time since 3/19/01, given consideration for any property which has been conveyed or transferred and is now being held for you in the name of some person other than yourself.

42. If so, state

- a. The name and address of each titleholder;
- b. The date each conveyance or transfer was made;
- c. A description of each item or piece of property conveyed;
- d. The amount of the consideration given for such property;

Trusts

43. Do you, your partnership or company, hold any property as executor of a testamentary or inter vivos trust? (inter vivos – becomes effective during life of settlor) (settlor – creator of trust)

44. If so, state:

- a. A description of the property held in trust;
- b. The name and address of the trustor or settlor;
- c. The name and address of each beneficiary of the trust;

- d. Whether or not you have a general power of appointment over any property contained in the trust;
- e. The date the trust was created;
- f. The location of the original trust instrument (where it is filed).

45. Since 3/19/01, have you, your partnership or company, created, or contributed to, any trust for the benefit of others?

46. If so, state:

- a. When the trust was created;
- b. A description of the property contributed by you;
- c. The name and address of each trustee;
- d. The name and address of each beneficiary of the trust;
- e. Whether or not any of the beneficiaries are related.

Legacies or Bequests

47. Are you, your partnership or company, an heir-at-law or beneficiary under the terms of the Will of any person now deceased?

48. If so, state:

- a. The name of the decedent;
- b. The name and address of the court in which the estate is pending or the person who has possession of a Will not offered for probate;
- c. Whether you have received any advancements from either the testator or his personal representative, and, if so, the amount of each advancement received;
- d. Whether you have renounced any bequest or legacy, and, if so
 - 1. The date of the renunciation;
 - 2. The identity of each person whose interest in the estate was enhanced as a result of this renunciation.

Accounts Receivable

49. According to your, your partnership or company's business records, what is the present monetary amount of your accounts receivable?

50. Since 3/19/01, have any of your accounts receivable been assigned, or otherwise disposed of, other than by collection?

51. If so, state:

- a. The name of the account;
- b. When the account was assigned or otherwise disposed of;
- c. The name and address of each assignee or other transferee;
- d. Whether the assignment or other disposition covered only present account receivable;
- e. Whether or not the assignment or other disposition also included future accounts receivable, and, if so, to what extent;
- f. The amount of consideration received for the assignment or other disposition.

Disposition of Property

52. Have you, your partnership or company, at any time since 3/19/01, conveyed or disposed of any property either by sale, gift or otherwise?

53. If so, for each disposition, state:

- a. A description of the property disposed of;
- b. The date of disposition;
- c. The name and address of each person to whom disposition was made;
- d. How disposition was made, whether by sale, gift or otherwise;
- e. What consideration was received.
- f. To whom was consideration paid.

54. Have you, your partnership or company, made any conveyances, transfers, gifts or other dispositions of property since 3/19/01, with any

reservation of rights, benefits, or options running to you for the reacquisition of the property at some future date?

55. If so, for each disposition, state:

- a. A description of the property conveyed, transferred or otherwise disposed of;
- b. When the property was disposed of;
- c. The name and address of the transferee;
- d. The nature of the reservation, benefit or option reserved.

56. Have you, your partnership or company, since 3/19/01, assigned any thing or chose in action?

57. If so, for each assignment, state:

- a. A description of the thing or chose in action assigned;
- b. When the assignment took place;
- c. The name and address of each assignee;
- d. The consideration received for the assignment.

Bulk Sales

58. Have you, your partnership or company, at any time since 3/19/01, either sold, transferred, or assigned, in bulk, all or a substantial part of your stock in trade or trade fixtures?

59. If so, for each transfer, state:

- a. The date on which the transaction took place;
- b. A description of the property disposed of;
- c. The name and address of each transferee or assignee;
- d. The amount or value of consideration received as the sales price;
- e. Whether or not any notice of the intended sale, transfer, assignment or mortgage was recorded, and, if so, when and where the notice was recorded;

f. Whether or not any notice of the sale transfer or assignment was published in any newspaper, and, if so, the name and date of publication.

Casualty Losses

60. Have you, your partnership or company, at any time since 3/19/01, suffered any casualty loss from fire, wind, theft or otherwise?

61. If so, for each loss, state:

- a. A description of the property lost or damaged;
- b. The cause of the loss;
- c. The date of the loss;
- d. The amount of the loss;
- e. Whether or not the loss was covered by insurance, and, if so:
 1. The name and address of the insurance carrier;
 2. The policy limits;
 3. The policy number;
 4. Whether or not a claim has been filed with the insurance carrier, and, if so, when;
 5. Whether or not the claim has been paid, and, if so, when and in what amount.

Options

62. Have you, your partnership or company, at any time since 3/19/01, been a party to any contract, or any other agreement, whereby you granted an option to anyone to purchase any or all of your or your partnership or company's assets?

63. If so, for each contract and option, state:

- a. The date on which the contract was made;
- b. Where the contract was made;
- c. The name and address of each person, firm or corporation who is a party to the contract;

- d. What consideration was received for the contract;
- e. The name and address of each person or entity furnishing the consideration;
- f. A description of the property covered by the contract;
- g. If applicable, the present location of the property covered by the agreement (the name and address of the person in whose custody the property is located);
- h. The terms of the contract.

Future Contracts

- 64. Have you, your partnership or company, at any time since 3/19/01 been a party to any contract or other agreement under you, your partnership or company, agreed to provide products and/or services in the future?
- 65. If so, for each contract, state:
 - a. The date on which the contract was made;
 - b. Where the contract was made;
 - c. The name and address of each person, firm or corporation who is a party to the contract;
 - d. What consideration was received for the contract;
 - e. The name and address of each person or entity furnishing the consideration;
 - f. A description of the property covered by the contract;
 - g. If applicable, the present location of the property covered by the agreement (the name and address of the person in whose custody the property is located);
 - h. The terms of the contract.

Creditors

- 66. Do you, your partnership or company, at the present time have any creditors?
- 67. If so, for each creditor, state:

- a. The name and address of each creditor;
- b. The amount of the debt owed;
- c. The date the debt was incurred;
- d. The consideration you received for the debt;
- e. A description of the security given to secure the debt.

Exemptions

68. Do you, your partnership or company, claim that any of the real property, personal property, or other property owned by you is exempt from the claims of your, your or its creditors?

69. If so, for each item of property, state:

- a. A description of the property and its estimated value;
- b. Your reason for claiming the property to be exempt.

Books and records

70. Do you keep any books or other written memoranda of your, your partnership or company's income and business affairs?

71. If so, state:

- a. In what form the books or memoranda are kept;
- b. When the books or memoranda were first maintained;
- c. The name, address and telephone number of each person, firm or corporation who prepared the books or memoranda for you;
- d. Whether the books or memoranda are presently maintained;
- e. Whether or not the books or memoranda accurately reflect the information contained in your federal income tax returns for each respective year;
- f. Whether or not the books or memoranda accurately reflect the information contained in your state income tax returns for each respective year;

g. The present whereabouts of all books or memoranda for the period of through the present.

h. The name, address and telephone number of each person, firm or corporation who has custody of these books.

72. If you will do so without a motion to produce, attach to your answers to these interrogatories, a copy of each of your above-mentioned books and memoranda for the period of , through the present or state a time and place when and where the books and memoranda may be inspected.

73. Since 3/19/01, have you destroyed, transferred or disposed of any books of account, memoranda or other records relating to your/its business or income?

74. If so, state:

- a. When the books of account or records were destroyed, transferred or otherwise disposed of;
- b. Why they were destroyed, transferred or disposed of;
- c. What is the name and address of the person who destroyed, transferred or disposed of the books or memoranda.

Financial Statements

75. Have you, your partnership or company, employed, or had employed in your behalf, the services of a certified public accountant, a public accountant, or an accounting firm at any time since 3/19/01?

76. If so, for each accountant, state:

- a. The name and address of the accountant employed;
- b. The inclusive dates on which the accountant was employed;
- c. Why the accountant was employed;
- d. A description of the services performed by each accountant.

77. Have you personally prepared and issued any financial statement since 3/19/01?

78. If so, state:

- a. The purpose for which each statement was prepared and issued;

b. The name and address of each person, firm, corporation, partnership, mercantile or trade agency, or other organization to whom they were issued.

79. If you will do so without a motion to produce, attach a copy of each such financial statement to your answers to these interrogatories.

Inventories

80. Since 3/19/01, have you taken an inventory of your, your partnership or company's property, either personal or business?

81. If so, for each inventory, state:

- a. The date of the inventory;
- b. The name and address of each person who took the inventory or supervised the taking of the inventory;
- c. The name and address of each person having possession of a copy of the inventory;
- d. The total dollar value of your property stated in the inventory;
- e. Whether the inventory was taken at cost, market or other valuation;
- f. Why each inventory was taken;
- g. Whether the inventory was of personal or business property.